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BEFORE THE CORPORATION COMMISSION

AZ CORP COMMISSION

DOCKET CONTROL

Arizona Corporation Commission

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Commissioners

GARY PIERCE – Chairman

BOB STUMP

SANDRA D. KENNEDY

PAUL NEWMAN

BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER
COMPANY, LLC FOR APPROVAL OF A
RATE INCREASE

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A FINANCING
APPLICATION

DOCKET NO. W-04254A-08-0362

**Emergency Motion for Temporary
Restraining Order and Order to
Show Cause**

BY THE INTERVENER:

On Oct. 30, 2009, Decision No. 71317 authorized Montezuma Rimrock to incur long-term debt of \$165,000 from the Water Infrastructure of Financing Authority of Arizona for the purpose of completing an Arsenic Treatment Facility.

On April 27, 2011, in response to a request filed by Montezuma Rimrock, the Commission voted at the Commission's Staff Open Meeting to reopen Decision No. 71317 pursuant to A.R.S. 40-252 to determine **whether to modify** the decision concerning financing approval and related provisions. (Emphasis added)

On April 30, 2012, during a Procedural Conference, Counsel for Montezuma Rimrock stated he would submit new lease proposals to finance construction of the ATF to the Commission after withdrawing proposed leases that had been submitted to the docket.

At no time during the hearing did the Company state that it intended to move forward with construction of the ATF prior to having its new leases submitted to the Commission for review and comment. The Company has pledged in the past in this Docket that it would not begin construction until it gained Commission approval of the new financing plan.

During the same hearing, Commission staff noted that it had sent a Data Request to the Company seeking additional details about the proposed financing. Intervener has requested copies of all Data Request responses from the Company and none have been forthcoming on this matter.

At approximately 2 p.m., Tuesday, May 15, the Intervener personally observed ongoing construction by Montezuma Rimrock of an Arsenic Treatment Facility at the Company's Well No. 1 site. A building that will house the arsenic filtration system is being erected.

Records obtained by Intervener from the Arizona Department of Environmental Quality from an April 26, 2012 meeting between ADEQ, ACC staff and MRWC show the company stated it would have the ATF installed by June 7, 2012, to meet an ADEQ compliance deadline. (Exhibit 1)

An ADEQ deadline does not provide a "green light" to Montezuma Rimrock to begin construction of the ATF when it still does not have approved financing to replace the WIFA loan. Nor has the Company submitted a new rate case that, under Decision No. 71317, must be filed before May 31, 2012.

The ongoing construction comes 13 months after the Company caused the construction of 2,500-foot pipeline and incurred unapproved, long-term debt of approximately \$35,000 to Rask Construction. The pipeline construction was specifically cited as part of the ATF operational and financing plans approved in Decision No. 71317 and paid for from WIFA funds.

The Company is recklessly installing the ATF knowing that it presently has no legal access to its long planned primary Well No. 4. As the Commission knows, Yavapai County revoked the company's use permit for the parcel on which Well No. 4 is located for its business operations. The Company has stated in an appeal of the use permit revocation filed with Yavapai County that the ATF will require Well No. 4 to operate. (Exhibit 2)

In addition, the Company knows that the ultimate fate of Well No. 4 will be determined in a pending law suit in Yavapai County that will have oral arguments on May 31. If the Company loses the lawsuit, it will not be able to use Well No. 4 as part of its business operations.

Therefore, it is premature for the Company to install an ATF when it doesn't even have a well with sufficient flow rates to operate the ATF as well as no approved financing plan. The Company has submitted no alternative operational plan for the ATF to the Commission from what was outlined in Decision No. 71317, which relied specifically on Well No. 4.

During the April 30, 2012 Procedural Conference, MRWC owner Patricia Olsen stated that "most" of MRWC's customers have already installed R/O systems to treat the

arsenic contaminated water. Ms. Olsen originally proposed to install point-of-use R/O systems when she purchased the water company in 2005. Given the fact the Company doesn't presently have sufficient water capacity to operate the ATF, it is in the best interest of rate payers to determine the cost of installing R/O systems in the rest of the community and the cost of maintaining these systems compared with building an ATF with what appears to be a very expensive and complicated leasing and sublease financing plan based on the leases that were submitted, and later withdrawn, by the Company. The Company later rejected the R/O systems because of high growth projections that have not materialized. Rather than the 300 plus customers projected for 2012, the Company has approximately 200 customers.


At this time, the Company is in violation of Decision No. 71317 that requires it to use Well No. 4 to operate the ATF and to use WIFA financing to pay for the project. The Company has not submitted any proposed alternative financing plans for the ATF, as it stated it would do when this Docket was reopened in April 2011.

Intervener respectfully requests that the Commission issue a Temporary Restraining Order prohibiting the Company from continuing construction of the ATF and to schedule an Order to Show Cause Hearing as soon as possible to set a firm schedule of events that must occur prior to construction of the ATF, including approval of a financing plan and a new operational plan if Well No. 4 can no longer be used; and a comparison of the cost of installing R/O systems to Montezuma Rimrock's remaining customers who have not yet installed them.

Irreparable harm will be done if construction of the ATF is allowed to continue and an injunction is necessary to preserve the *status quo* until the company submits proposed financing and operational plans contingent on the inability to use Well No. 4 and the Commission determines whether the financing plans need formal approval.

Finally, only a minimal bond, if any, should be required. Intervener has limited means and is acting in the public interest and that of Montezuma Rimrock ratepayers to ensure enforcement and application of Commission rules and statutes.

Respectfully Submitted this 16th Day of May 2012


John E. Dougherty
Intervener

Copies of the foregoing mailed
This 16th Day of May 2012 Mailed to:

Todd C. Wiley
Fennemore Craig, PC
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012

Patricia D. Olsen, Manager
MONTEZUMA RIMROCK WATER COMPANY, LLC
P.O. Box 10
Rimrock, AZ 86335

Exhibit 1



FACILITY MEETING SUMMARY

DATE: April 26, 2012 TIME: 10 - 11:30 LOCATION: ADEQ - Phoenix, AZ

PUPOSE OF MEETING: Discuss status of arsenic treatment system at Montezuma Rimrock Water Co

NAME OF FACILITY: Arizona Department of Environmental Quality (ADEQ) and Arizona Corporation Commission (ACC)

ADDRESS OF FACILITY: Phoenix, AZ

PRIMARY WQD SECTION: Water Quality Compliance Section

UNIT: Enforcement Unit

ATTENDEES:

Name	Affiliation	Phone
1. Patricia Olsen <i>P.O.</i>	Montezuma Rimrock Water Co	
2. Mindi Cross <i>MC</i>	ADEQ	(602) 771-2209
3. Marcia Colquitt <i>MC</i>	ADEQ	771-4651
4. Vivian Burns <i>VB</i>	ADEQ	771-4608
5. Nancy Scott <i>NS</i>	ACC	542-0743
6. Marlin Scott <i>MS</i>	ACC	542-7262
7. Jeff Michlik <i>JM</i>	ACC	364-2034

KEY SUMMARY/AGREEMENTS/EXPECTATIONS:

Discuss Consent Order requirements and Amendment - Status of Arsenic Treatment Sys?

ADEQ What is your Next Step —? MRCross - What's Next?

P. Olsen - What do you want me to do —? *MRC*

M. Colquitt - Do you need Well # 4? *NO. Need 150 gpm -*

What alternative do you have *Current 50 gpm*

if *can't* put well on-line —?

P.O. Prob. would lose pressure if Well # 4 doesn't go online.

NEEDS pressure for future tests —

[MRC = Montezuma Rim Rock Water Co.]

ATS = ARSENIC Treatment Sys.

ADED - Must install treatment -

MRE - Have appealed ^{appeal} Yavapai Cty for permit.

ACC - Timeline for how soon? Hearing Next week - ^{to est.} court date.

P. Olson - No option wells to use.

ADED - sent Admin NOU - Penalties can be kicked in

Admin NOU - Put MRE on Notice - ADED - Grant MRE

Copy of the Admin NOU. Ms. O. said she has Not received

Certified Copy

ACC - What is how soon w/ Yavapai Cty? MRE - ^①Appealing
Yavapai Cty ^{Expiration of} ~~canceling~~ permit for well #4 - ^{For 50' setback.}

Cty wants MRE to get permission from customer -
for the set-back. MRE - ^{County} contends ^{others} have rec. permits
w/ less than 50' setback -

ACC - What is NEEDED for MRE to be able to use ~~the~~ well #4

MRE - Can install Arsenic Sys, but can't use treated water ^{yet}

ADED - R U moving forward w/ installation of the ATS?

MRE - Submitted ^{letter} from installer - Does Not want to
give Copy of letter, ^{the} letter says can install by June 7, 2012, ^{Yavapai}

ADED - What is backup plan - MRE - Win suit against Cty.

ACC - is only option to use ^{the} Sys that uses 150 gpm?

MRE ^{well isn't} If ~~don't~~ ^{not} ~~get~~ ^{well} approved - will need to install "Booster ^{prep} pump"

ADED - If Need to Make changes in ^{sys} ~~ATC~~ - NO New ATC /
add changes on ATC. ^{If No} Extensive charges.

ADEQ - Clarification - Can use existing well 1 with
booster system if needed ~~to~~ → Can then use Arsenic Test

MRR - City considers #4 as a New Well - It is a replacement.

MRR - Plan B - Add Booster Pumps to support A.T.S.

MRR - If B. Pumps used - Modify or New ATC? How long
to get approval?

ADEQ - Can you Meet June 7 deadline? MRR - YES.

ADEQ - We have received complaints about not being able
to get alt. water. MRR - Says she is available and
will give customers water if they call.

MRR - Says all customers get 40 psi.

*UB → Contact Ms Olson each time we receive
a complaint so she can handle the complaint.

MRR - Would like a written report on the complaint.

MRR - "Will feed well #4 into storage tank backwash"

ADEQ - Reminder - Consent order was signed - and
compliance is past due. MRR "yes"

MRR - Using well #4 to irrigate vegetation.
(now)

MRR - Does MRR need to wait for the ADC before using the
New Well?

ADEQ - Will ADEQ see ADC approval process.

MRR - Is continued monthly sampling for Arsenic at RAS
Necessary?

~~ADP~~ - Continue ~~Sampling~~ ^{and} Sampling at ~~RO~~ ^{test} ~~Sampling~~ until AOC is ISSUED -

ACC - Customer base? MRR ~~220~~

* ADEQ To Check & see if using Well #4 for backwash is a problem - Need modifications, etc.

* ADEQ ENGINEERING Sect Mgrs to follow up if feedback is necessary

* ADEQ - Check re / Eng Review Sect - Re Fire Protection.

Exhibit 2

Law Office of Douglas C. Fitzpatrick40 Bell Rock Plaza, Suite A
Sedona, Arizona 86351

Phone (928) 284-2190 Fax (928) 284-2191

e-mail fitzlaw@sedona.net

May 1, 2012

Yavapai County Development Services
Attn: Tammy DeWitt, Senior Planner
10 South Sixth Street
Cottonwood, Arizona 86326RE: Application for Appeal of Revocation of Use Permit
Well #4 on APN #405-25-517; HA#H9139

Dear Ms. DeWitt:

This correspondence constitutes Montezuma Rimrock Water Company LLC's Application for Appeal of the revocation of its Use Permit. It also constitutes the water company's request for an extension of the deadline to obtain the Certificate of Compliance which is a condition of the Use Permit.

As you noted in your April 10 notification to the water company, "Stipulation number 5 of the approval states 'Certificate of Compliance to be issued within one year of Board of Supervisors' approval demonstrating that the use is operating in compliance with all applicable local, state and federal regulations.'"

Compliance by the water company with the Yavapai County Water Well Code has been raised as an issue in a pending superior court lawsuit, *Dougherty and Shue v. Yavapai County*, Case No. P1300CV2010000585.¹ In this lawsuit, plaintiffs allege, among other things, that the

¹ John Dougherty is not a customer of the water company. His is, at best, a part time resident of its service area. He has fought every attempt by the water company to obtain the Certificate of Compliance. He has intervened in several administrative proceedings at the corporation commission, always in aggressive opposition to the water company. He has filed his own adversary complaint against the water company with the corporation commission. Mr. Dougherty's zeal to put the water company out of business has, in a number of instances, crossed the line. On July 18, 2011, the water company's owner, Patricia Olsen, was compelled to obtain an Injunction Against Harassment against Mr. Dougherty in the Verde Valley Justice Court [J-1302-CV-201103222]. Mr. Dougherty was ordered to "have no contact with [Ms. Olsen] except through attorneys, legal process [and] court hearings..." Undeterred, Mr. Dougherty was

Yavapai County Development Services
Attn: Tammy DeWitt, Senior Planner
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well is placed on the lot in violation of the setback requirements of the code. The water company asserts that the setback requirements are invalid because they conflict with their corresponding state regulation in violation of ARS sec. 49-106.²

If the setback requirements of the water well code are construed by the court to be valid, the water company will admittedly be unable to establish that it is operating "in compliance with all applicable local, state and federal regulations."

arrested on December 2, 2011 for violating the injunction. Notwithstanding the unequivocal prohibition in the order against direct contact by Mr. Dougherty with Ms. Olsen, the deputy county attorney dismissed the criminal charge, finding incorrectly that Mr. Dougherty "is justified in contacting the victim" because of the "ongoing civil matters pending before the corporation commission." Mr. Dougherty was not justified in violating a clear and unambiguous order prohibiting direct contact with his victim. Mr. Dougherty has made numerous and repeated public records requests of the corporation commission, Arizona Department of Environmental Quality, Yavapai County Development Services, Arizona Department of Water Resources and Water Infrastructure Finance Authority for information to use against Ms. Olsen and the water company. The pending superior court case commenced by Mr. Dougherty is only the tip of the ice berg with respect to the time, effort and resources expended by him in his clearly-expressed goal to put Ms. Olsen out of business. In the course of his campaign, Mr. Dougherty's mantra has been that the water company has failed to provide safe drinking water to its customers. Were it not for the obstructive attacks by Mr. Dougherty, the arsenic contamination issues about which he complains would have been resolved many months ago.

² ARS sec. 49-106 prohibits the adoption by counties of ordinances which conflict with state law. State law allows for construction of water wells more than 100 feet from waste disposal systems. R12-15-818. The setback requirements of the county's water well code prohibit wells less than 50 feet from the boundaries of the lot on which the well is located. The map appended hereto depicts the well in question and is part of the record in the superior court case. The distances identified on the map are undisputed by all parties in the lawsuit brought by Dougherty and Shute. The map shows that, while the well is 47 feet and 41.5 feet from the north and west boundaries of the lot, in apparent violation of the water well code, it is also 101 feet and 112 feet from the disposal fields on the neighboring lots to the north and west. While the distances between the well and neighboring disposal fields exceed the setback requirements of state law, the distances between the well and the well site's boundaries are short of the 50 feet setback requirement the water well code. The county code prohibits what is permitted by state law in conflict with state law and in violation of ARS sec. 49-106.

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However, the water company is hopeful that Judge Jones will find in its favor on this issue. The pending motions which address the validity of the setback requirements of the water well code are fully briefed. The water company has requested oral argument on its motion. As of this submission, a date has not been set by Judge Jones for a hearing.

There are important public policy considerations of which the board of supervisors should be aware in passing upon this request. Well #4 is needed by the water company to comply with ADEQ regulations for arsenic levels/standards. Arsenic removal equipment is proposed to be constructed which requires water to be pumped at 150 gpm. The water company's system is not capable of producing water at this capacity without Well #4.

The availability of water and the company's water storage capacity have been only marginally adequate to serve its customers. When there is a breakdown in Well #1, residents within the service area are sometimes forced to go without water until repairs are made. The water from Well #4 would remedy the water shortfall and inadequate storage capacity.

The minimal supply of water and inadequate storage capacity force the local fire district to rely on neighboring fire fighters for support in suppressing fires. The lack of water and inability of the local fire district to fight its own fires can result in lengthy response times. The longer the response time, the greater is the prospect of loss of life or property damage as a result of the fire.

For these reasons, the water company respectfully requests that revocation of its use permit be vacated and that the deadline for obtaining a Certificate of Compliance be extended until litigation concerning the validity of the setback requirements of the county's water well code is resolved. Resolution of the superior court litigation may not occur until a final judgment is entered by Judge Jones and such judgment is reviewed by appeal or special action.

Yours truly,


Douglas C. Fitzpatrick

DCF:lk

